

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar Number 200659
1515 Clay Street, 20th Floor
5 Post Office Box 70550
Oakland, California 94612-0550
6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case Number *2013-689*

12 **KELLIE R BERMINGHAM**
13 **a.k.a. KELLIE RENEE FREEMEN**
BERMINGHAM
14 **6519 Caribbean Drive West**
Benton, Arkansas 72015

A C C U S A T I O N

15 **Registered Nurse License Number 589615**

16 Respondent.

17
18 Complainant Louise R. Bailey, M.Ed., R.N., alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the Executive
21 Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs.

22 2. On or about October 17, 2001, the Board issued Registered Nurse License Number
23 589615 to respondent Kellie R Bermingham, a.k.a. Kellie Renee Freeman Bermingham. This
24 registered nurse license expired on March 31, 2005, and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

28 ///

1 4. Section 118, subdivision (b) provides:

2 “The suspension, expiration, or forfeiture by operation of law of a license issued by a board
3 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order
4 of a court of law, or its surrender without the written consent of the board, shall not, during any
5 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
6 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
7 provided by law or to enter an order suspending or revoking the license or otherwise taking
8 disciplinary action against the licensee on any such ground.”

9 5. Section 2750 provides:

10 “Every certificate holder or licensee, including licensees holding temporary licenses, or
11 licensees holding licenses placed in an inactive status, may be disciplined as provided in this
12 article [Article 3 of the Nursing Practice Act (Bus: & Prof Code, § 2700 et seq.)]. As used in this
13 article, ‘license’ includes certificate, registration, or any other authorization to engage in practice
14 regulated by this chapter. The proceedings under this article shall be conducted in accordance
15 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
16 Government Code, and the board shall have all the powers granted therein.”

17 6. Section 2759 provides:

18 “The board shall discipline the holder of any license, whose default has been entered or
19 who has been heard by the board and found guilty, by any of the following methods:

20 “(a) Suspending judgment.

21 “(b) Placing him upon probation.

22 “(c) Suspending his right to practice nursing for a period not exceeding one year.

23 “(d) Revoking his license.

24 “(e) Taking such other action in relation to disciplining him as the board in its discretion
25 may deem proper.”

26 7. Section 2764 provides:

27 “The lapsing or suspension of a license by operation of law or by order or decision of the
28 board or a court of law, or the voluntary surrender of a license by a licentiate shall not deprive the

1 board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding
2 against such license, or to render a decision suspending or revoking such license.”

3 **STATUTORY AND REGULATORY AUTHORITY**

4 8. Section 141 provides:

5 “(a) For any licensee holding a license issued by a board under the jurisdiction of the
6 department, a disciplinary action taken by another state, by any agency of the federal government,
7 or by another country for any act substantially related to the practice regulated by the California
8 license, may be a ground for disciplinary action by the respective state licensing board. A
9 certified copy of the record of the disciplinary action taken against the licensee by another state,
10 an agency of the federal government, or another country shall be conclusive evidence of the
11 events related therein.

12 “(b) Nothing in this section shall preclude a board from applying a specific statutory
13 provision in the licensing act administered by that board that provides for discipline based upon a
14 disciplinary action taken against the licensee by another state, an agency of the federal
15 government, or another country.”

16 9. Section 2761 provides, in pertinent part:

17 “The board may take disciplinary action against a certified or licensed nurse or deny an
18 application for a certificate or license for any of the following:

19 “(a) Unprofessional conduct, which includes, but is not limited to, the following:

20 . . .

21 “(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action
22 against a health care professional license or certificate by another state or territory of the United
23 States, by any other government agency, or by another California health care professional
24 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
25 action.”

26 10. California Code of Regulations, title 16, section 1444, provides:

27 “A conviction or act shall be considered to be substantially related to the qualifications,
28 functions or duties of a registered nurse if to a substantial degree it evidences the present or

1 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
2 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

3 “(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
4 subdivision (d) of Penal Code Section 11160.

5 “(b) Failure to comply with any mandatory reporting requirements.

6 “(c) Theft, dishonesty, fraud, or deceit.

7 “(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
8 Penal Code.”

9 **COST RECOVERY**

10 11. Section 125.3 provides, in pertinent part:

11 “(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
12 proceeding before any board within the department or before the Osteopathic Medical Board,
13 upon request of the entity bringing the proceedings, the administrative law judge may direct a
14 licensee found to have committed a violation or violations of the licensing act to pay a sum not
15 to exceed the reasonable costs of the investigation and enforcement of the case.

16 ...

17 “(i) Nothing in this section shall preclude a board from including the recovery of the costs
18 of investigation and enforcement of a case in any stipulated settlement.”

19 **FACTUAL BACKGROUND**

20 12. Respondent has held a registered nurse license in Arkansas under license number
21 R54454.

22 13. On or about June 2, 2008, respondent entered into a Consent Agreement (Agreement)
23 and Order with the Arkansas State Board of Nursing (Arkansas Board). This Agreement and
24 Order stated that respondent admitted to misconduct as a registered nurse, including charting
25 errors; failure to properly document medication withdrawal, administration, and wasting; and
26 failure to properly care for patients. The Order placed respondent’s license on probation for one
27 year subject to terms and conditions, including completion of approved course work. The
28 Arkansas Board adopted the Agreement and Order on or about August 14, 2008.

1 CAUSE FOR DISCIPLINE

2 CAUSE FOR DISCIPLINE

3 Bus. & Prof. Code, §§ 141, 2761, subd. (a)(4)
4 Unprofessional Conduct: Out-of-State Disciplinary Action

5 14. The allegations of paragraphs 12-13 are realleged and incorporated by reference as if
6 fully set forth.

7 15. Respondent has subjected her registered nurse license to disciplinary action under
8 sections 141 and 2761, subdivision (a)(4), for the unprofessional conduct of disciplinary action
9 against a health care professional license by another state or territory of the United States or by
10 any other government agency. As set forth in paragraphs 12-13 above, in 2008 the Arkansas
11 Board adopted an Agreement and Order in which respondent admitted misconduct as a registered
12 nurse. The Order placed respondent's license on probation for one year subject to terms and
13 conditions, including completion of approved course work.

14 PRAYER

15 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
16 Accusation, and that following the hearing the Board issues a decision:

17 1. Revoking or suspending Registered Nurse License Number 589615 issued to Kellie R
18 Bermingham, a.k.a. Kellie Renee Freeman;

19 2. Ordering Kellie R Bermingham, a.k.a. Kellie Renee Freeman Bermingham, to pay the
20 Board the reasonable costs of the investigation and enforcement of this case pursuant to Business
21 and Professions Code section 125.3; and

22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: February 28, 2013

24 for Louise R. Bailey
25 LOUISE R. BAILEY, M.Ed., R.N.
26 Executive Officer
27 Board of Registered Nursing
28 Department of Consumer Affairs
State of California
Complainant

SF2013901294
90291414.doc